

EVIDENCE AND BURDEN OF PROOF

§ 10.115 What evidence is needed to establish a claim?

Forms CA-1, CA-2, CA-5 and CA-5b describe the basic evidence required. OWCP may send a request for additional evidence to the claimant and to his or her representative, if any; however the burden of proof still remains with the claimant. Evidence should be submitted in writing. The evidence submitted must be reliable, probative and substantial. Each claim for compensation must meet five requirements before OWCP can accept it. These requirements, which the employee must establish to meet his or her burden of proof, are as follows:

(a) The claim was filed within the time limits specified by the FECA;

(b) The injured person was, at the time of injury, an employee of the United States as defined in 5 U.S.C. 8101(1) and § 10.5(h) of this part;

(c) The fact that an injury, disease or death occurred;

(d) The injury, disease or death occurred while the employee was in the performance of duty; and

(e) The medical condition for which compensation or medical benefits is claimed is causally related to the claimed injury, disease or death. Neither the fact that the condition manifests itself during a period of Federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.

(f) In all claims, the claimant is responsible for submitting, or arranging for submittal of, a medical report from the attending physician. For wage loss benefits, the claimant must also submit medical evidence showing that the condition claimed is disabling. The rules for submitting medical reports are found in §§ 10.330 through 10.333.

§ 10.116 What additional evidence is needed in cases based on occupational disease?

(a) The employee must submit the specific detailed information described on Form CA-2 and should submit any checklist (Form CA-35, A-H) provided by the employer. OWCP has developed

these checklists to address particular occupational diseases. The medical report should also include the information specified on the checklist for the particular disease claimed.

(b) The employer should submit the specific detailed information described on Form CA-2 and on any checklist pertaining to the claimed disease.

§ 10.117 What happens if, in any claim, the employer contests any of the facts as stated by the claimant?

(a) An employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.

(b) Any such statement shall be submitted to OWCP with the notice of traumatic injury or death, or within 30 calendar days from the date notice of occupational disease or death is received from the claimant. If the employer does not submit a written explanation to support the disagreement, OWCP may accept the claimant's report of injury as established. The employer may not use a disagreement with an aspect of the claimant's report to delay forwarding the claim to OWCP or to compel or induce the claimant to change or withdraw the claim.

§ 10.118 Does the employer participate in the claims process in any other way?

(a) The employer is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time.

(b) The employer may ascertain the events surrounding an injury and the extent of disability where it appears that an employee who alleges total disability may be performing other work, or may be engaging in activities which would indicate less than total disability. This authority is in addition to that given in § 10.118(a). However, the